

**Testimony of Lorry S.C. Brown
On Behalf of the Michigan Poverty Law Program (MPLP)**

**House Financial Services Committee
House Bill 5277**

Chairman Callton and members of the House Financial Services Committee, thank you for the opportunity to testify regarding House Bill 5277. I am Lorry Brown, the statewide foreclosure prevention specialist at Michigan Poverty Law Program.¹ Michigan Poverty Law Program is the statewide support office for legal services programs.

The significant issue presented by this bill is the interior inspections of a homeowner's home without reasonable cause. Such inspections are clear encroachments upon a homeowner's privacy and dignity as responsible homeowners. Given that, on behalf of the Michigan Poverty Law Program, we oppose any provision authorizing interior provisions. We also oppose the rebuttable presumption provision.

**The House Bill Is Not Narrowly Tailored to Address
The Targeted Consequences of Foreclosure Crisis –
Neighborhood Blight – Property Damage.**

An argument for this bill requiring interior inspections is the claim that during the redemption period the homes are being damaged, the property is abandoned, thereby contributing to neighborhood blight. Additionally, the banks argue that during the redemption period, the homes are deteriorating, are being destroyed and are losing value. Further, allowing the banks to expedite the procedure to transfer the property to the new homes will avoid the home from being damaged, and the home can be occupied and maintained by the new owners sooner.

First, no one has done empirical studies of how redemption laws affect home retention or whether redemption laws contribute to deteriorated or destroyed homes. The banks' arguments about homeowners destroying their homes during the redemption period are not based on empirical studies, just anecdotes. The consumer advocates can similarly provide anecdotal information showing that homeowners are not destroying their homes during the redemption period. Most homeowners are actively still seeking to keep their homes. In fact, most homeowners often are still being reviewed for loss mitigation options by the lenders. Allowing inspections of occupied properties is inappropriate. Abandoned properties are really the issue, not occupied homes.

¹ As the statewide foreclosure specialist, I manage the Michigan Foreclosure Prevention Project, a project of the Michigan Poverty Law Program. The Michigan Foreclosure Prevention Project is a collaborative statewide project involving all the major legal services programs. The goal of the Project is to provide comprehensive and coordinated foreclosure prevention advocacy throughout the state by 1) providing direct legal representation to homeowners facing foreclosure, 2) providing support to housing counseling organizations, 3) coordinating policy advocacy on a statewide basis, and 4) providing training and technical support.

Second, there are other ways to address the destruction of property and neighborhood blight instead of allowing interior inspections. For example, the bill could focus on exterior inspections only. Exterior inspections are certain to reveal vacant and abandoned properties. This is consistent with statutes in other states, such as Indiana and Nevada. These states, in addressing the issue of vacant and abandoned properties, enacted statutes that applied to truly unoccupied and abandoned properties.

Moreover, in Michigan, there are current laws that can adequately address the destruction of property problem. For example, under Michigan law, the banks can shorten the redemption period to 30 days if the home is abandoned. MCL 600.3240(9). Further, in Michigan, the bank or the purchaser of the sale can bring a court action, along with an action for possession of the property, against the homeowner for damage to the property. See MCL 600.3278. There is simply no need to subject occupied properties to these interior inspection requirements.

Finally, another component to the vacant property/neighborhood blight problem is the bank walk-aways. Particularly in hard pressed urban areas like Detroit, banks have engaged in the practice of initiating foreclosures, then abandoning them when the properties appear to be of little value or turn out to be net liabilities. In fact, municipalities and states throughout the country have implemented or plan to implement requirements on the banks to maintain the properties. Thus, instead of attempting to take the properties from homeowners by way of this inspection provision, there should be legislation that requires the banks to maintain the abandoned property in a safe condition until re-sale.

Specific Comments on Various Provisions:

- 1) **Sections 3237 and 3238:** As these sections pertain to interior inspections, we oppose these provisions. These provisions should apply to exterior inspections only.
 - a) Section 3237 requires that the purchaser of the sale notify the homeowner of his intent to inspect. We have always requested that any notice should also include a notice of the homeowner's redemption rights along with informing the homeowner that the homeowner should notify the bank when s/he plans to vacate the property. I have sample language if needed.
 - b) Section 3237 notice – It is unclear when after the sale will this notice be provided? How will this notice be provided? There should be a written notice posted on the door, and mailed certified, return receipt requested. Again, I have sample language if needed.

- c) Section 3238 – inspection provision.
■ There is no baseline inspection

While we oppose interior inspections, here is a proposal:

The purchaser of the sale has the right to conduct routine inspections on the real property, without going inside. If in the course of a routine exterior inspection the inspector sees evidence that gives a reasonable basis for asking for an interior inspection, then the inspector must give a written advance notice that describes the evidence that constitutes a reasonable basis for requesting an interior inspection.

Finally, given that these provisions are in response to the foreclosure crisis, one approach could be to sunset these provisions. This crisis-driven problem should not be the basis for institutionalizing long-term changes to Michigan's foreclosure laws. These changes would last long after the crisis subsidies.

2) **Section 3238(4) – Summary Proceedings**

- a) We have concerns about the broad language “unreasonably refuse” and “if damage to the property is imminent.”

- b) **Section 3238(5) - Notice of intent to evict** – This notice should include posting on the door and certified, return receipt requested mailing.

- c) 7 days to repair – 7 days from what date? The date of the letter? The date of receipt of letter? The 7-day notice is too short. Currently, Michigan law requires the mortgagee to send a notice to the mortgagor that after inspection, they believe the property is abandoned. The mortgagee is required to post the notice and mail certified, return receipt requested. Also, under this statute, the mortgagor has 15 days to respond. MCL 600.3241a. This section should be consistent with existing Michigan law.

- d) **Section 3238(9) – List of conditions defined as “damage”**
- The court should make findings of damage based on clear and convincing evidence that the homeowner caused the damage and not based on presumptions developed from a list.

3) **Section 3278(2)-(4) – Rebuttable Presumptions**

- The mortgagor shall inform the mortgagee of intent to move – how will the mortgagor know to notify the mortgagee? No notice was given to the mortgagor as to this requirement. I have sample language if needed.

- The mortgagor shall inform the mortgagee of intent to move – how? Oral or written notice?

- If the mortgagor intends to move “at any time” after the foreclosure sale ... – It is unclear as to what period of time this is referring? During the redemption period? After the redemption period?

- **Rebuttable presumption** – we oppose this provision. The only standard for assessing costs of damage to the mortgagor should require the mortgagee to prove by clear and convincing evidence that the mortgagor committed intentional acts to damage the property.

A rebuttable presumption standard is contrary to another part of this section. Section 3278(1) provides that the mortgagor is liable “for any physical injury to the property ... if the physical injury is caused by or at the direction of the mortgagor.” This section does not create a presumption of damage as the mortgagee is required to show intentional damage.

Conclusion

The Michigan Poverty Law Program opposes any provision pertaining to interior inspections and the rebuttal presumption provision. Interior inspections are unnecessary to address the problem of property damage and abandoned property. There simply is no need to subject Michigan homeowners to an invasion of their privacy and dignity, when this problem can be addressed through existing law or exterior inspections only. This bill is clearly over-inclusive in its reach.

Thank you.

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